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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/345,659	06/30/1999	JAMES A. MICHENER	PD-990066	1480

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HUGHES ELECTRONICS CORPORATION  
PATENT DOCKET ADMINISTRATION  
BLDG 001 M/S A109  
P O BOX 956  
EL SEGUNDO, CA 902450956

EXAMINER

ESQUIVEL, DENISE LYNNE

ART UNIT PAPER NUMBER

3744

DATE MAILED: 01/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/345,659

Applicant(s)

MICHENER

Examiner

Michael N. Opsasnick

Art Unit

2654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

## A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 June 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "said last step" in the first line of claim 4. There is insufficient antecedent basis for this limitation in the claim. Furthermore, it is not clear as to which function this "last step" refers to. Claim 4 also recites the limitation "the under packet", which lacks antecedent basis.

Claim 5 is determined to be vague and indefinite, since the claim refers to claim 4 which has been determined to be vague and indefinite; furthermore, the claim language of claim 5 does not remedy the indefiniteness problem of claim 4.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Gaalaas et al (6226758).

As per claims 1,15-19, Gaalaas et al (6226758) teaches "a method for switching of audio broadcasts in AC3 format to be transmitted as AES3 signal bit streams comprising determining a predetermined count at which each in the AES3 bit stream is to arrive, disabling a response to receipt of the packet to avoid outputting the data in the packet if it is received before said predetermined count has lapsed from receiving the start of a packet" as a counter in the AES decoder (Fig. 6)

"detecting if a disruption occurs while packet is being received, and accepting the packet of AC-3 information....if a disruption has been detected" as detecting a gap in the message data (col. 12 lines 31-52);

As per claim 2, Gaalaas et al (6226758) teaches time count (col. 12 lines 31-36)

As per claim 3, Gaalaas et al (6226758) teaches word count as bitword count (col. 12 lines 37-46)

As per claim 6, Gaalaas et al (6226758) teaches “a method for controlling the status of channel status bits in multiple data streams comprises establishing agreement.....header structure” as examining the channel data (col. 2 lines 47-57)

“regenerating the channel status bits.....IRD and the decoder” as aligning the bit streams (col. 5 line 47 – col. 6 line 45);

As per claim 7, Gaalaas et al (6226758) teaches “establishing agreement.....head in an encoder” as bit status according to AES and IEC (col. 7 lines 54-67);

As per claim 8, Gaalaas et al (6226758) teaches “establishing agreement.....AC-3 audio stream” as CRC bit adjustment (col. 9 lines 22-34);

As per claims 9-11,13,14, Gaalaas et al (6226758) teaches manual and automatic adjustment, including a copy bit (col. 9 lines 35-40);

As per claim 12, Gaalaas et al (6226758) teaches “wherein said establishing agreement comprises setting the AC-3 audio stream channel bit to be off..... AC-3 audio stream” as CRC bit adjustment (col. 9 lines 22-34);

As per claim 20, Gaalaas et al (6226758) teaches “wherein said detector is operative while preparing a tape for broadcast” as to be used for tape replace (col. 1 lines 5-27);

As per claim 21, Gaalaas et al (6226758) teaches the scope of claim 21 as applied to claim 1 above, in a sound card entity (Fig. 2)

As per claim 22, Gaalaas et al (6226758) teaches a time coder reader as time stamp (Fig. 4), for playback (col. 9 lines 35-45)

As per claim 23, Gaalaas et al (6226758) teaches playback command (col. 9 lines 35-45)

As per claim 24, Gaalaas et al (6226758) teaches the size of the packet and the header as determining packet size and generating IEC 958 (col. 2 lines 35-40)

As per claim 25, Gaalaas et al (6226758) teaches the header, AC-3 packet, unfilled spaces, and AES card in PCM audio (as output AES in PCM format -- col. 2 lines 38-43)

As per claim 26, Gaalaas et al (6226758) teaches AC-3 data file (col. 1 lines 23-28)

As per claim 27, Gaalaas et al (6226758) teaches CD-Rom as CD (Fig. 1, subblock 5.27)

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***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please see the references listed in the attached PTO 892.

6. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 872 9314,

(for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Opsasnick, telephone number (703)305-4089, who is available Tuesday-Thursday, 9AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Marsha Banks-Harold, can be reached at (703)305-4379. The facsimile phone number for this group is (703)308-6306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 2600 receptionist whose telephone number is (703) 305-4750, the 2600 Customer Service telephone number is (703) 306-0377.

mno

1/13/02

*Vijay B. Chauhan*  
1/23/02

**Attachment for PTO-948 (Rev. 03/01, or earlier)**  
**6/18/01**

**The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.**

**INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

**1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes **incorporated** therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

**2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

**Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.